

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :

v. : CRIMINAL NO. 1:CR-01-275-01

WAYNE SCOTT, :
Defendant

TRANSCRIPT OF PROCEEDINGS

SENTENCING

Before: Hon. Yvette Kane, Judge

Date: June 19, 2003

Place: Courtroom No. 4
Federal Building
Harrisburg, Pa.

FILED
HARRISBURG, PA

AUG 25 2003

MARY E. O'NEAL, CLERK
Per *[Signature]* Deputy Clerk

COUNSEL PRESENT:

DENNIS C. PFANNENSCHMIDT, Assistant U.S. Attorney

For - Government

LENORA M. SMITH, Esquire

For - Defendant

Monica L. Zamiska, RPR
Official Court Reporter

1 MR. PFANNENSCHMIDT: Good morning, Your Honor.

2 THE COURT: Good morning, Mr. Pfannenschmidt.

3 MS. SMITH: Good morning, Your Honor, and I do
4 apologize. I did not have this down. I goofed at my office.
5 I was on my way to the gym, so I'm glad somebody caught me or
6 I would have been in real trouble.

7 THE COURT: Maybe you can go afterwards.

8 MS. SMITH: I need to go afterwards, thank you.
9 Thank you, Your Honor.

10 THE COURT: All right, Mr. Pfannenschmidt.

11 MR. PFANNENSCHMIDT: Your Honor, this is the matter
12 of the United States v. Wayne Scott. The number is
13 1:CR-01-275-1. Mr. Scott had previously entered a plea of
14 guilty to two charges, they being conspiracy, the first count
15 of the indictment, and falsifying a firearms transaction,
16 which was the second count of the indictment. A presentence
17 report has been prepared, and he is present for sentencing at
18 this time with Miss Smith, his counsel.

19 THE COURT: Miss Smith, are you ready to go forward
20 with sentencing in this case?

21 MS. SMITH: Yes, Your Honor.

22 THE COURT: Do you have the presentence report
23 reflecting a total offense level of 27, a criminal history
24 category of IV and a guideline range of 100 to 125 months?

25 MS. SMITH: I did get a copy of the presentence

1 report at the time that it was done. That's what it was my
2 client says.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: I note no objections to the guideline
5 calculations.

6 MS. SMITH: There wasn't any, Your Honor.

7 THE COURT: All right, good, and I understand that
8 the government has a motion for downward departure.

9 MR. PFANNENSCHMIDT: Yes, Your Honor.

10 THE COURT: Let's hear that first.

11 MR. PFANNENSCHMIDT: Your Honor, the basis for the
12 departure motion is that Mr. Scott, and I actually should
13 note that the number of continuances in this case have been
14 for his cooperation in the case noted in the government's
15 motion, which was the United States v. Tyrone Smith, which
16 was a drug case. That was heard before Judge Rambo at the
17 end of April, beginning of May, and Mr. Scott did in fact
18 testify in that case. Mr. Behe from our office was the
19 prosecutor in the case, and he informs me that Mr. Scott's
20 testimony was true and accurate and was a factor in the
21 conviction of Mr. Smith. So that is essentially the basis
22 for the motion today.

23 THE COURT: All right. Do you want to speak to the
24 motion for downward departure at all, Miss Smith?

25 MS. SMITH: Your Honor, we would ask that you grant

1 the downward departure motion. Mr. Scott did this
2 voluntarily. He just happened to come across some
3 information while he was in prison. He didn't know Mr. Smith
4 before he was incarcerated. And we would ask that you would
5 grant the downward departure.

6 THE COURT: I'm going to grant the motion. I have
7 some details of the offense about which Mr. Scott has
8 testified and another defendant cooperated in that case, and
9 through testimony that was given regarding his motion for
10 downward departure I received some information about the
11 seriousness of the offense and the very dangerous nature of
12 the man against whom Mr. Scott has testified. The other man
13 who testified against him was threatened, as was his family
14 and young children. So I know that Mr. Scott has testified
15 with some risk to himself, and judging from the outcome of
16 that case that the information he gave was truthful and
17 important and timely. So the government's motion will be
18 granted.

19 Miss Smith, with respect to sentencing based on the
20 downward departure motion is there anything you want to say
21 on behalf of Mr. Scott?

22 MS. SMITH: Anything you want to say?

23 THE DEFENDANT: Your Honor, I want to say
24 something. First of all, I'd like to thank the combined
25 efforts of the federal government, Prosecutor Behe, yourself.

1 I'm a firm believer that when things are broke, they need to
2 be broken down and be fixed, and I was living a broken life
3 for a long time, and this incarceration right here has helped
4 me come to find out what it means to be actually broken down
5 because I have been locked up before, and I came home and
6 still was living the same broken type of life. But this time
7 right here I found God, and I found out what it really meant
8 to be broken down and fixed up. So I accept anything -- I
9 accept my punishment as given to me today. Thank you.

10 THE COURT: Thank you. Anything else on half of
11 Mr. Scott?

12 MS. SMITH: No, Your Honor.

13 THE COURT: Mr. Pfannenschmidt.

14 MR. PFANNENSCHMIDT: Your Honor, the only thing I
15 would just add, it would just simply be to ask the Court to
16 dismiss the remaining counts of the indictment which would be
17 Counts 3 and 4.

18 THE COURT: All right.

19 MR. PFANNENSCHMIDT: Thank you.

20 THE COURT: Let's look at the guideline calculation
21 with the government's motion for downward departure. The
22 range now is 100 to 125 months, and then with a 3 level
23 depart we go to, what is it, Mr. Pfannenschmidt?

24 MR. PFANNENSCHMIDT: Seventy-seven to 96 months,
25 Your Honor.

1 THE COURT: All right. I'm going to sentence Mr.
2 Scott with the downward departure motion in roughly the
3 middle of the guideline range, in the reduced range. I don't
4 think his -- although, as you all know, I view very seriously
5 any weapons offense because of the danger that occurs as a
6 result of them. Weapons are placed in the hands of criminals
7 who injure innocent people and very often law enforcement
8 officers. I view that very seriously.

9 However, I do not think that Mr. Scott's record is
10 the worst, and the guidelines are calculated with points
11 added for the number of weapons, and he got 4 criminal
12 history points for that but was sort of at the lower end of
13 that number of weapons in that category. So for all of those
14 reasons I'm going to place him in the middle of the guideline
15 range of a sentence of 84 months.

16 Pursuant to the Sentencing Reform Act of 1984 it's
17 the judgment of the Court that the defendant Wayne Scott is
18 hereby committed to the custody of the Bureau of Prisons to
19 be imprisoned for a term of 84 months. This term consists of
20 60 months on Count 1 and 24 months on Count 2 to be served
21 consecutively.

22 The Court finds that the defendant has some ability
23 to pay a fine. Accordingly it's further ordered that the
24 defendant pay to the United States the sum of \$1,200,
25 consisting of a fine of \$500 and a special assessment of \$100

1 on each of the two counts. The fine and special assessment
2 shall be paid through the Clerk of Court. They are due in
3 full immediately and are payable during the period of
4 incarceration with any balance to be paid within 2 years of
5 the defendant's release from custody.

6 On release from imprisonment the defendant shall be
7 placed on supervised release for a term of 2 years. Within
8 72 hours of release from the custody of the Bureau of Prisons
9 the defendant shall report in person to the probation office
10 in the district to which he's released.

11 While on supervised release the defendant shall
12 comply with the standard conditions that have been adopted by
13 the Court and with the following additional conditions: The
14 defendant shall pay any balance of the fine imposed by this
15 judgment that remains unpaid at the commencement of the term
16 of supervised release in minimum monthly installments of not
17 less than \$50. The defendant shall submit to one drug test
18 within 15 days of release from custody and at least two
19 periodic drug tests thereafter.

20 Mr. Scott, you should know that you do have a right
21 to appeal your conviction if you believe that your guilty
22 plea was somehow unlawful or involuntary or perhaps that
23 there was some other fundamental defect in the proceedings
24 that you didn't waive by entering a guilty plea. You also
25 have a statutory right to appeal your sentence under certain

1 limited circumstances, particularly if you think the sentence
2 I now impose is contrary to law. With very few exceptions
3 any notice of appeal would have to be filed within 10 days
4 after sentence is imposed on you.

5 If you're not able to pay the costs of an appeal,
6 you could apply for leave to appeal in forma pauperis and ask
7 that the clerk prepare a notice of appeal on your behalf.

8 The basis for the sentence is as follows: The
9 Court adopts the factual findings and guideline application
10 in the presentence report. The fine is below the guideline
11 range because of this defendant's inability to pay. The
12 sentence departs from the guideline range on motion of the
13 government as a result of this defendant's substantial
14 assistance.

15 Anything else for the record, counsel?

16 MS. SMITH: Your Honor, Mr. Scott has been in since
17 what, 10, October, '01?

18 THE DEFENDANT: Yes.

19 MS. SMITH: We would like any credit.

20 THE COURT: The bureau will credit him.

21 MS. SMITH: Okay.

22 THE DEFENDANT: I want to know -- I wanted to go to
23 a particular jail, if it was possible. I wanted to know
24 could I request a recommendation from you please.

25 THE COURT: Yes, where is that, Mr. Scott?

1 THE DEFENDANT: Loretto.

2 THE COURT: I'm sorry.

3 THE DEFENDANT: Loretto.

4 THE COURT: I'll make that request, and, of course,
5 I'm sure Miss Smith has told you it's entirely up to the
6 Bureau of Prisons, but I'll make that request on your behalf.

7 THE DEFENDANT: Thank you. I appreciate that.

8 MS. SMITH: Thank you. Thank you, Your Honor.

9 THE COURT: We'll be in recess.

10 (The proceedings concluded.)

11

12 I hereby certify that the proceedings and evidence
13 of the court are contained fully and accurately in the notes
14 taken by me on the sentencing of the within cause and that
15 this is a correct transcript of the same.

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Monica L. Zamiska

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Monica L. Zamiska, RPR

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Official Court Reporter

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